



Managing Corruption and Third Party Risk in India: Does Your Compliance Program Address the Challenges and Opportunities?

December 6, 2018

An overview of the key risks with:

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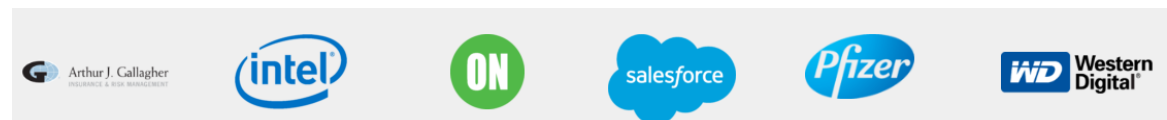
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FCPA and Indian enforcement highlights and trends

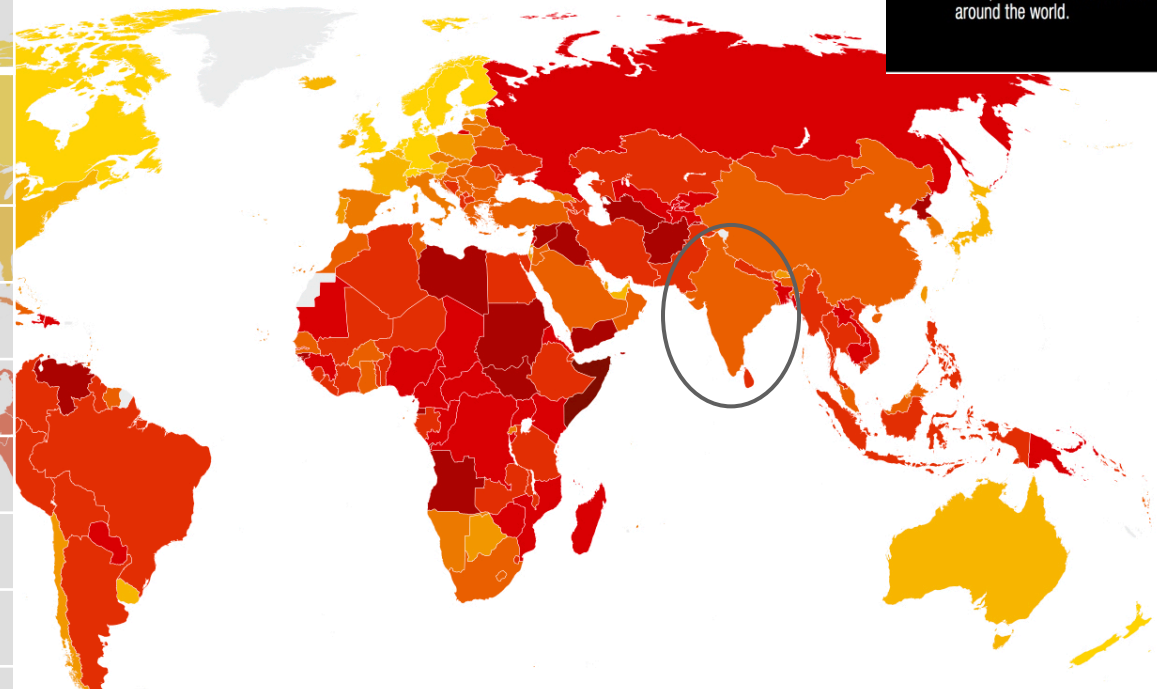
CORRUPTION PERCEPTIONS INDEX 2017

The perceived levels of public sector corruption in 180 countries/territories around the world.

India's global standing on corruption

Top Jurisdictions for FCPA Actions

Country	Number of actions
China	54
Nigeria	23
Iraq	22
Indonesia	21
India	20
Mexico	20
Brazil	18
Gabon	18
Russia	15
Argentina	14



SCORE

Highly
Corrupt



Very
Clean

0-9 10-19 20-29 30-39 40-49 50-59 60-69 70-79 80-89 90

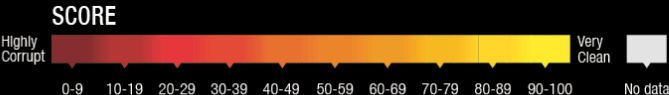
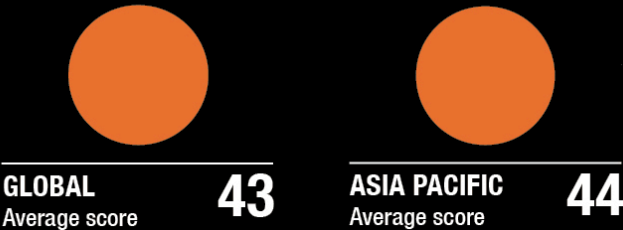
#stopthecorrupt

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Corruption in APAC

CORRUPTION PERCEPTIONS INDEX 2017

Asia Pacific



RANK	COUNTRY/TERRITORY	SCORE			
			96	Indonesia	37
1	New Zealand	89	96	Thailand	37
6	Singapore	84	103	Mongolia	36
13	Australia	77	107	Vietnam	35
13	Hong Kong	77	111	Philippines	34
20	Japan	73	117	Pakistan	32
26	Bhutan	67	122	Nepal	31
29	Taiwan	63	130	Myanmar	30
32	Brunei Darussalam	62	135	Laos	29
51	Korea, South	54	135	Papua New Guinea	29
62	Malaysia	47	143	Bangladesh	28
77	China	41	161	Cambodia	21
81	India	40	171	Korea, North	17
91	Sri Lanka	38	177	Afghanistan	15
91	Timor-Leste	38			

The perceived levels of public sector corruption in 180 countries/territories around the world.

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Key bribery risks in India

- Third party intermediaries and use of 'liaisoning' payments
 - Poor or no due diligence on third parties
- Facilitation payments or bribes to obtain licenses and permits from different agencies (at both the state and federal levels)
- Excessive gift-giving and entertainment expenses
- Prevalence of cash payments and poor accounting/finance controls
 - Lack of computerization of systems
- "Out of sight, out of mind"
 - Lack of commitment to compliance from local Indian management
- Excessive red tape and bureaucracy
- A business culture partly dependent on whom you know
- Risks vary according to specific states, specific industries

Summary of FCPA and Indian Enforcement Actions

Year	Case	US Enforcement Action	FCPA Charges	Parallel enforcement action in India?
2018	Stryker	SEC (Cease and Desist)	Books & Records, Internal Controls	No
	Beam Inc.	SEC (Cease and Desist)	Books & Records, Internal Controls	No
2017	Alere, Inc.	SEC (Cease and Desist)	Books & Records, Internal Controls	No
	CDM Smith, Inc.	DOJ (Declination with Disgorgement)	Bribery	Yes
	Mondelez, Inc.	SEC (Cease and Desist)	Books & Records, Internal Controls	No
2016	Embraer S.A.	DOJ (DPA) SEC (Consent Agreement)	Bribery, Books & Records, Internal Controls	Yes
	Anheuser-Busch InBev SA/NV	SEC (Cease and Desist)	Books & Records, Internal Controls	No
2015	Louis Berger International, Inc.	DOJ (DPA)	Bribery	Yes
2012	Tyco International	SEC (Consent Agreement) DOJ (NPA)	Bribery, Books & Records, Internal Controls	No
	Oracle Corporation	SEC (Consent Agreement)	Books & Records, Internal Controls	No
2011	Diageo Plc	SEC (Cease and Desist)	Books & Records, Internal Controls	No
2010	Pride International, Inc. / Pride Forasol S.A.S	DOJ (DPA) / DOJ (Plea Agreement)	Bribery, Books & Records, Internal Controls	Yes
2008	Westinghouse Airbrake Technologies Corp.	DOJ (NPA) SEC (Consent Agreement, Cease and Desist)	Bribery, Books & Records, Internal Controls	Yes
	Control Components Inc. / Mario Covino	DOJ (Plea Agreement)	Bribery	Yes
2007	Textron Inc.	DOJ (NPA) SEC (Consent Agreement)	Books & Records, Internal Controls	No
	York International Corporation	SEC (Consent Agreement)	Bribery, Books & Records, Internal Controls	No
	Electronic Data Systems Corporation / Chandramowli Srinivasan	SEC (Cease and Desist / Consent Agreement)	Books & Records	No
	The Dow Chemical Company	SEC (Consent Agreement, Cease and Desist)	Books & Records, Internal Controls	Yes
2001	Baker Hughes Incorporated	SEC (Cease and Desist)	Books & Records, Internal Controls	No

Recent global anti-corruption cases involving India

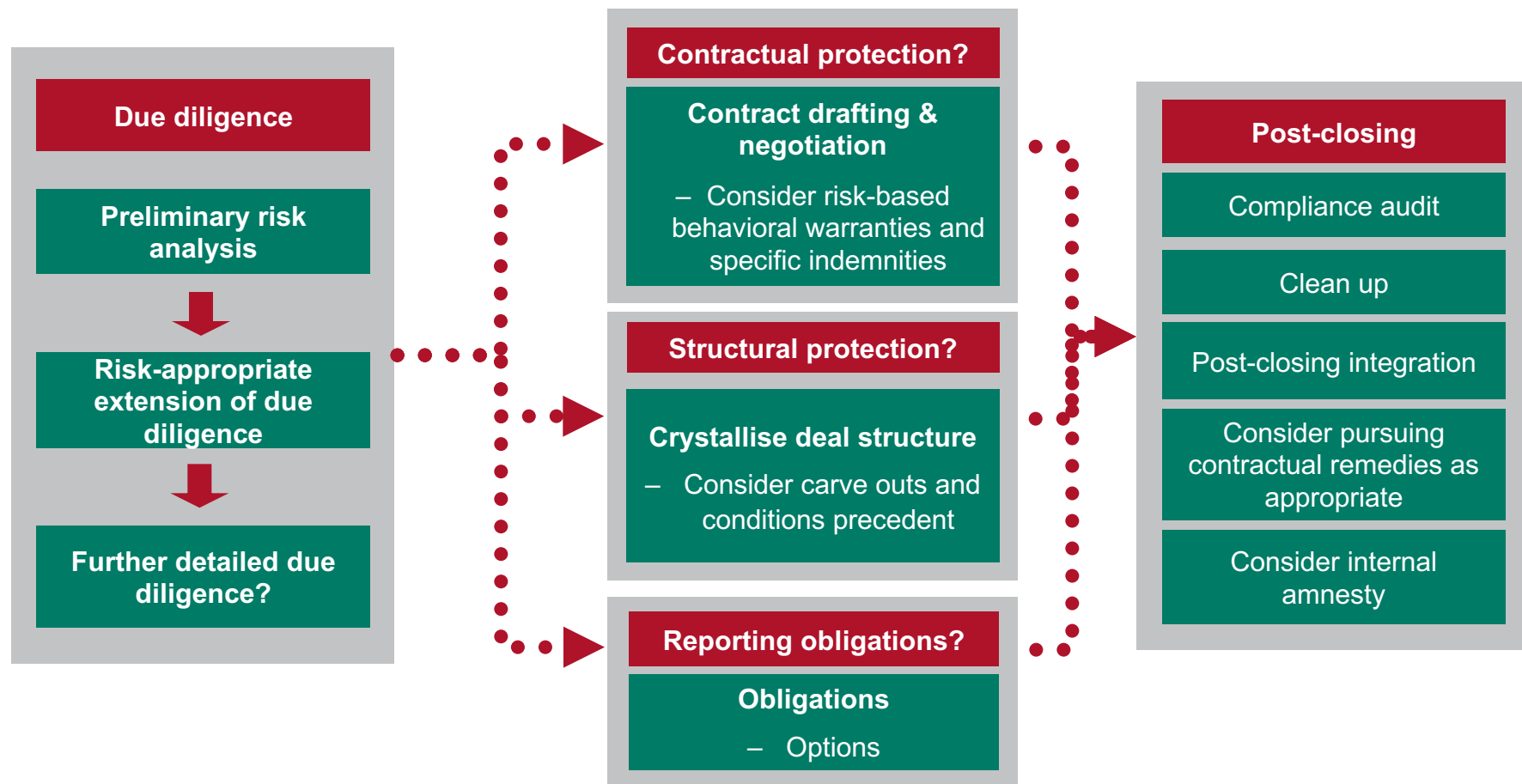
- **Stryker Corp.** – Michigan-based medical device company agreed to pay a \$7.8 million penalty to SEC for insufficient internal accounting controls and inaccurate books and records in **India, China, and Kuwait**. (September 2018)
- **Beam Suntory Inc.** – Illinois – based spirits manufacturer agreed to pay more than \$8 million to settle SEC charges that it violated the accounting provisions of the FCPA in connection with its **Indian** subsidiary's use of third-party distributors to make illicit payments to increase sales orders, process licensing registrations, and acquire non-public data. (July 2018)
- **Alere, Inc.** – Massachusetts-based medical manufacturer agreed to pay more than \$13 million to settle SEC charges that it committed accounting fraud through its subsidiaries to meet revenue targets and made improper payments to foreign officials to increase sales in **India and Colombia**. (September 2017)
- **CDM Smith Inc.** – DOJ declined to prosecute FCPA after CDM admitted to making \$4 million on bribe-tainted contacts in **India**, made reforms and agreed to disgorge its profits. (June 2017)

Recent global anti-corruption cases involving India (cont'd)

- **Cadbury Limited/Mondelez International** - The global snack business agreed to pay a \$13 million civil penalty for FCPA violations occurring after Mondelez (then Kraft Foods Inc.) acquired Cadbury and its subsidiaries, including one in **India** that engage an agent to obtain government licenses and approvals for a chocolate factory in Baddi whose services were not accurately reflected in company's books and records which "created the risk" that payments could be used for improper purposes. (January 2017)
- **Rolls-Royce** - Company agreed to \$800 Million global resolution with authorities in the United States, the United Kingdom and Brazil; Rolls-Royce entered into a deferred prosecution agreement with Serious Fraud Office and admitted to paying bribes or failing to prevent corrupt payments in connection with its business in China, India, Indonesia, Malaysia, Nigeria, Russia and Thailand. In India, Rolls-Royce falsified documents to hide payments to intermediaries because contracts with the Indian government contained undertakings that intermediaries would not be used, breach of which would have allowed the Indian government to cancel the contract and prevent bidding for future contracts. Additionally, there is an inference that corrupt payments were made to a tax inspector in India to recover a list of intermediaries used by Rolls-Royce that had been confiscated by tax authorities (January 2017)
- **Oracle** - SEC charged the California-based computer technology company with violating FCPA by failing to prevent a subsidiary from secretly setting aside money off the company's books to make unauthorized payments to phony vendors in **India**; Oracle agreed to pay \$2 million penalty (August 2012)

Approaching compliance issues in India

Compliance can affect all phases in a corporate transaction



US enforcement trends

- DOJ and SEC committed to cross-border cooperation and are training their foreign counterparts on best practices
- Prosecution of individuals increasing (Yates Memo, September 2015, as updated by Deputy Attorney General to focus on “the individuals who play significant roles in setting a company on a course of criminal conduct”)
- Whistleblower activity on the rise: 3,620 SEC tips in 2014, 3,923 in 2015, 4,218 in 2016, 4,484 in 2017, and 5,282 in 2018, including from India.
- DOJ and SEC use aggressive investigation tactics, often irrespective of whether company cooperating, increasing FBI and other resources
- Self-disclosure, extensive cooperation, effective compliance programs, speedy remediation of misconduct put companies in the best position to receive a declination or to significantly mitigate penalties
- FCPA fines and penalties are increasing every year

Top FCPA Settlements

2018

Petróleo Brasileiro (Brazil)	\$1,780,000,000
Société Générale (France)	\$585,000,000

2017

Telia Company AB (Sweden)	\$965,000,000
Keppel Offshore (Singapore)	\$422,000,000

2016

VimpelCom (Holland)	\$795,000,000
Teva Pharmaceutical (Israel)	\$519,000,000
Och-Ziff (United States)	\$412,000,000

2014

Alstom (France)	\$772,000,000
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2009

KBR/Halliburton (United States)	\$400,000,000
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2008

Siemens (Germany)	\$800,000,000
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Enforcement in India - key changes

Prevention of Corruption Act – Key Changes

- Amendments to the Prevention of Corruption Act, 1988 (“**PoCA**”), the main anti-corruption law in India, in effect as of July 26, 2018
- The amended PoCA prohibits
 - Public servants from accepting undue advantage
 - for improper or dishonest performance of public duty; or
 - without adequate consideration from a person having business dealings with him/her
 - Middlemen from accepting undue advantage
 - to influence any public servant, whether by corrupt or illegal means; or
 - for the exercise of personal influence with any public servant
 - Any person from giving/ promising to give undue advantage
 - to induce a public servant to perform public duty improperly; or
 - to reward a public servant for performing public duty improperly

Prevention of Corruption Act – Key Changes

- Bribe-giving has been recognized as a separate offense, except when given under compulsion and reported to law enforcement agencies within 7 days
- Prescriptive timeline for completion of trial has been introduced – total of 4 years (2 years + extension of 6 months at a time)
- Liability for bribery through third parties has been specifically recognized under PoCA
- Commercial organizations have been brought under the ambit of the PoCA, for acts of ‘persons associated’ with the commercial organization – such persons include agents and subsidiaries
- Foreign commercial entities conducting business in India are also under the ambit of PoCA
- Directors/ managers/ secretaries/ officers of a commercial organization will be liable when the organization commits the offence with their connivance/ consent, and can be imprisoned for 3 to 7 years and subject to a fine

Prevention of Corruption Act – Key Changes

- A commercial organization may avoid liability under PoCA if it has implemented procedures as per guidelines prescribed by the Central Government
- While the guidelines are yet to be issued, guidance may be sought from global requirements. Such procedures may include:
 - Establishing clear and precise anti-corruption policies and procedures
 - Establishing a zero-tolerance “tone from the top” of the senior management towards bribery by conducting regular training and awareness campaigns
 - Creating an active whistleblower program
 - Conducting compliance audits, including of third parties
 - Obtaining certifications such as ISO 37001: Anti Bribery Management Systems

Enforcement Environment in India

- In recent years, the Indian Government has become more aggressive in investigations and prosecutions under PoCA
- According to statistics presented in the Parliament:
 - CBI registered corruption 1,922 cases against public servants in the last 3 years (632 in 2017, 673 in 2016 and 617 in 2015)
 - CBI registered 314 cases during January-June 2018
- Law enforcement agencies as well as the judiciary have stepped up their efforts to strengthen enforcement of anti-corruption laws
 - A number of high-profile cases involving various sectors
 - For example, Rafale case in the defense sector, Punjab National Bank and Nirav Modi case in the financial sector, V K Sasikala disproportionate assets case in politics.
- Various legislative and enforcement developments have bolstered the anti-corruption efforts – Fugitive Economic Offenders Act, 2018, striking off 224,000 shell companies in 2017, Lokpal Act, 2016 etc.
- Public indignation with corruption cases has increased, resulting in greater scrutiny

India Enforcement Investigations – Learnings

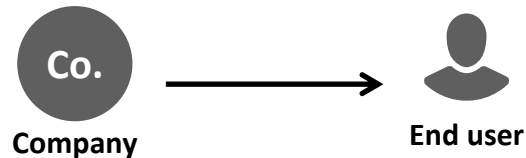
- Indian enforcement agencies are increasingly using mutual legal assistance treaties (MLATs) to prosecute companies and their key employees
 - The Ministry of Home Affairs has MLATs with 39 countries which provide for criminal matters
- Indian enforcement agencies are willing to aggressively collaborate across jurisdictions through knowledge sharing
 - India entered into a joint declaration with Switzerland in 2017 for automatic exchange of information (AEOL) which enables India to receive financial information of accounts held by Indian residents in Switzerland
- The Fugitive Economic Offenders Act, 2018 aims to prevent economic offenders from becoming a fugitive in another country
 - Pursuant to this Act, notices were issued to jeweler Nirav Modi, while liquor baron Vijay Mallya was summoned under its Ordinance

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In-house counsel perspective and practical tips on third party risks

Types of 3rd parties

Customers



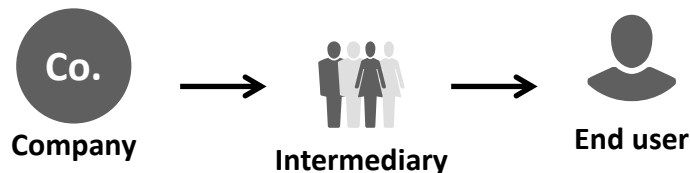
Includes: OEMs, EPC, Panel builder, Aggregators

Consortium Partners



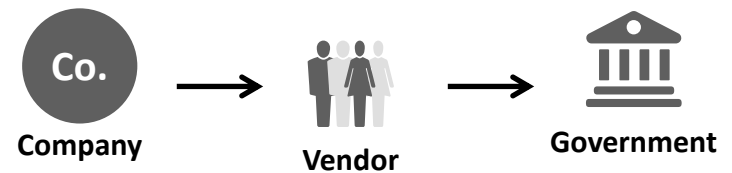
Includes: Joint ventures, co-bidders

Intermediaries



Includes: Sales reps, agents, distributors, resellers, Value Added Resellers

High risk vendors










Includes: customs brokers, tax agents, government consultants

Risks: Anti money laundering, reputation, improper payments, trade controls, competition law

 More than 90 percent of bribery cases involve third parties

Red Flags

-  *Rationale for use of intermediary/vendor not clear*
-  *Referral or direction from a customer*
-  *Request by an end user customer to use an Intermediary*
-  *Requests for unusual/exception payment arrangements*
-  *Unexplained line items in invoices*
-  *Deep discounts, commissions higher than market rates*
-  *Reluctance to co-operate with company's code of conduct*

A well rounded risk mitigation program

Prevent

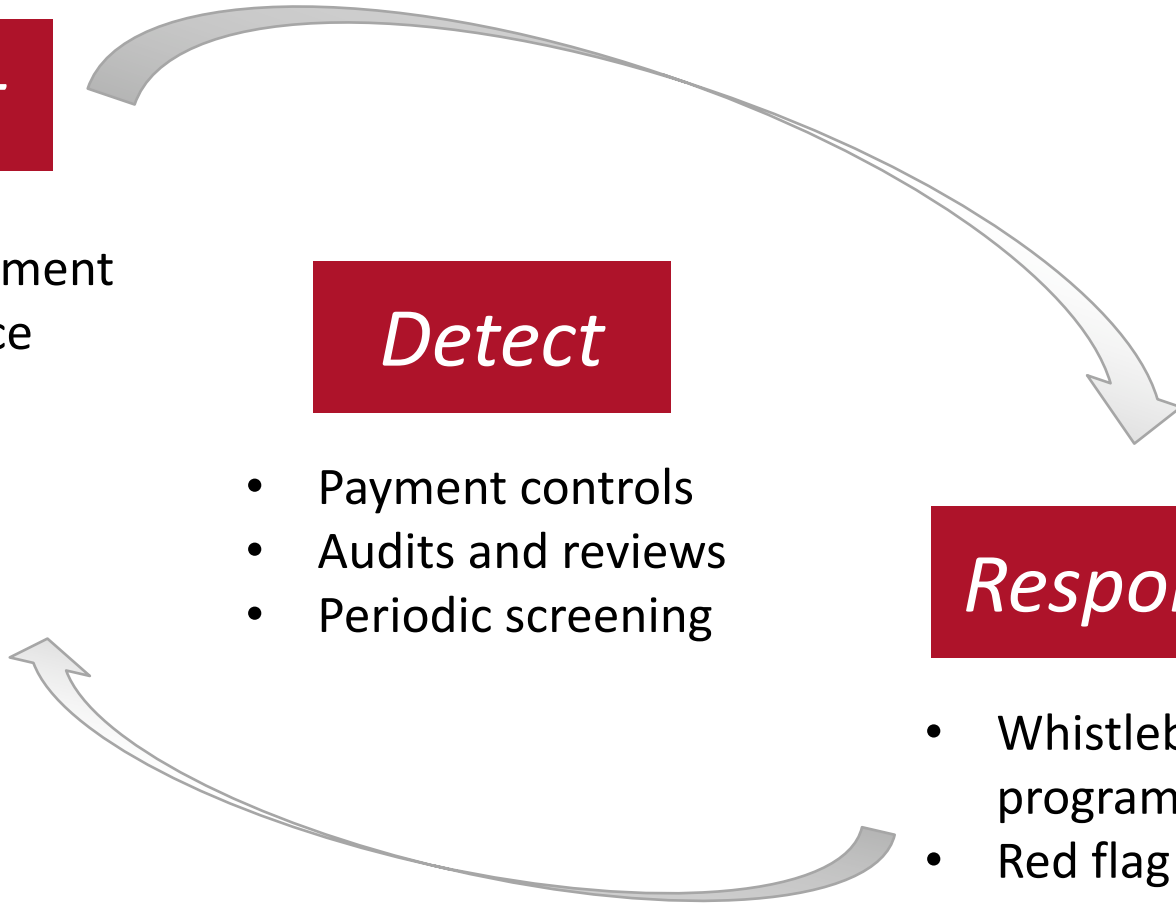
- Need assessment
- Due Diligence
- Screening
- Onboarding
- Contracts
- Trainings

Detect

- Payment controls
- Audits and reviews
- Periodic screening

Respond

- Whistleblower program
- Red flag resolution



Questions?

Thank you!



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